

ENVIRONMENTAL QUALITY

CHAPTER 56

UNDERGROUND STORAGE TANKS  
PETROLEUM AND CHEMICAL SUBSTANCES

Sub-Chapter 1

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Sub-Chapter 1

General Provisions

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and shall be used in conjunction with those definitions in 75-11-503, MCA.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system or tank system and aboveground releases associated with overfills and transfer operations as the regulated substances moves to or from an UST system.

(2) "Aboveground storage tank" or "AST" means any one or a combination of tanks that is used to contain an accumulation of petroleum or petroleum products, and the volume of which is 90% or more above the surface of the ground.

(3) "Active tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank that is being used, or is capable of being used, for dispensing, depositing or storing a regulated substance and is not inactive as defined in (31).

(4) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

(5) "Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(6) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(7) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(8) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil

resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(9) "CERCLA" means the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980, as amended.

(10) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(11) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

(12) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(13) "Consumptive use" with respect to heating oil means consumed on the premises.

(14) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(15) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(16) "Department" means the department of environmental quality created by 2-15-3501, MCA.

(17) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

(18) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

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(19) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(20) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before November 3, 1989. Installation is considered to have commenced if:

(a) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and

(b) either a continuous on-site physical construction or installation program has begun, or the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(21) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(22) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(23) "Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

(24) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(25) "Ground water" means water below the land surface in a zone of saturation.

(26) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

(27) "Hazardous waste" means a hazardous waste as defined by 75-10-403, MCA.

(28) "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(29) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(30) "Implementing agency" means an office or program of a local governmental unit, designated by the department pursuant to ARM 17.56.1003, in which the PST or UST system is located. Only one local governmental unit may act as an implementing agency for any given PST or UST system.

(31) "Inactive tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank for which the department has received written notice, in accordance with ARM 17.56.701, that the tank is currently not being used for dispensing, depositing or storing a regulated substance.

(32) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.

(33) "Installer" means an individual who is engaged in the business of installation or closure of underground storage tanks.

(34) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(35) "Local governmental unit" means a city, town, county, or fire district.

(36) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

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(37) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

(38) "New tank performance standards" includes design, construction, installation, release detection and compatibility standards.

(39) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after the effective date of this rule.

(40) "Noncommercial purposes" with respect to motor fuel means not for resale.

(41) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

(42) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

(43) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

(44) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(45) "Owner" means:

(a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(b) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

(46) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

(47) "Petroleum storage tank" or "PST" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503, MCA;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground pipes associated with tanks under (47)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Pipeline Safety Laws (49 USC 60101, et seq.); and  
(ii) state law comparable to the provisions of law referred to in (47)(d)(i), if the facility is intrastate.

(48) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(49) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

(50) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(51) "Public water supply system" means a public water supply system as defined by 75-6-107, MCA.

(52) "RCRA" means the federal Resource Conservation and Recovery Act of 1986.

(53) "Regulated substance" means a hazardous substance as defined in 75-10-602, MCA; or petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute); does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4, MCA.

(54) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a tank system into ground water, surface water or subsurface soils.

(55) "Release detection" means determining whether a release of a regulated substance has occurred from the tank system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

(56) "Repair" means to restore a damaged or leaking tank or UST system component to the manufacturer's original design standards.

(57) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(58) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, as amended, 42 USC 300f et seq. and implementing regulations in 40 CFR Parts 141 and 142.

(59) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

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(60) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(61) "State fire marshal" means the state fire marshal as provided for in 2-15-2005, MCA.

(62) "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(63) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

(64) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(65) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(66) "Underground release" means any belowground release.

(67) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

(68) "UST system" or "tank system" means an underground storage tank or petroleum storage tank, as appropriate, underground ancillary equipment, and containment system, if any.

(69) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-302, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 1999 MAR p. 2046, Eff. 9/24/99; AMD, 2003 MAR p. 1079, Eff. 5/23/03; AMD, 2003 MAR p. 2759, Eff. 12/12/03; AMD, 2005 MAR p. 443, Eff. 4/1/05.)

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17.56.102 APPLICABILITY (1) Except as otherwise provided in (2) through (6), this chapter applies to all owners and operators of UST systems and to all owners and operators of petroleum storage tanks who seek or intend to seek reimbursement from the Montana petroleum tank release cleanup fund. An UST system listed in (4) or (5) must comply with ARM 17.56.104.

(2) This chapter does not apply to the following UST systems:

(a) any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(b) any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of PSTs and UST systems:

(a) equipment or machinery that contains regulated substances for operation purposes such as hydraulic lift tanks and electrical equipment tanks;

(b) any UST system that contains a de minimis concentration of regulated substances;

(c) any emergency spill or overflow containment UST system that is expeditiously emptied after use;

(d) a storage tank that is situated in an underground area such as a basement, cellar, mine draft, shaft, or tunnel;

(e) an aboveground storage tank with a capacity less than 30,000 gallons; or

(f) aboveground pipes associated with tanks under (3)(d) and (e), except that pipelines regulated under the following laws are excluded:

(i) the Pipeline Safety Laws (49 USC 60101, et seq.); and

(ii) state law comparable to the provisions of law referred to in (1)(f)(i), if the facility is intrastate.

(4) Subchapters 2, 3, 4, 5, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of UST systems:

(a) wastewater treatment tank systems;

(b) any UST system containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following); and

(c) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR Part 50, Appendix A.

(5) Subchapters 2, 3, 4, and 8 do not apply to any of the following types of UST systems:

- (a) any UST system whose capacity is 110 gallons or less.
- (b) airport hydrant fuel distribution system; and
- (c) UST systems with field-constructed tanks.

(6) Subchapter 8 does not apply to any of the following types of UST systems:

- (a) farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) tank used for storing heating oil for consumptive use on the premises where stored; and
- (c) underground pipes connected to an aboveground storage tank. (History: 75-11-319, 75-11-505, MCA; IMP, 75-11-319, 75-11-505, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2003 MAR p. 1079, Eff. 5/23/03.)

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17.56.103 INTERIM PROHIBITION FOR INSTALLATION IS REPEALED  
(History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 1986 MAR p. 669, Eff. 4/25/86; TRANS, from DHES, 1995 MAR p. 2259; REP, 2003 MAR p. 1079, Eff. 5/23/03.)

17.56.104 TANK STANDARDS FOR EXEMPTED UST SYSTEMS No person may install an UST system listed in ARM 17.56.102(4) or (5) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) is constructed or lined with material that is compatible with the stored substance. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259.)

17.56.105 VARIANCES (1) Any person subject to this chapter may request in writing that a variance from any requirement or procedure of this chapter be granted by the department to the requestor if the request includes approval of an alternate requirement or procedure.

(2) The written request must include the following:

(a) the specific site for which a variance is sought;

(b) the specific provision of this chapter from which the variance is sought;

(c) the time period for which the variance is sought;

(d) the reason the variance is requested; and

(e) the alternate procedure or requirement for which approval is sought and a demonstration that the alternate procedure or requirement provides an equivalent or greater degree of protection for the public health, welfare, safety and environment as the established requirement.

(3) The department shall grant or deny a variance requested in accordance with (1) within 30 days of receipt of the information required by (2) above. The department may only grant the variance if the applicant proves compliance with the requirements of (2)(e) by substantial evidence.

(4) The department, on its own initiative, may issue a variance from any requirement or procedure of this chapter when noncompliance is discovered as a result of a compliance inspection, immediate compliance is impracticable, and the cost of immediate compliance is disproportionate to the benefit provided.

(a) A variance under (4) may be issued only when the department makes a written determination that delaying compliance does not create a significant increased threat to the public health, welfare, safety and the environment.

(b) A variance issued under (4) may postpone compliance only until the earliest practicable time for replacement or upgrading the facility UST systems as identified in department findings.

(c) The department may define a time period for each variance granted under (4). In no case may a variance be issued under (4) for a term longer than 15 years.

(5) A variance issued under (4) must include the following:

(a) the specific provision of this chapter to which the variance applies;

(b) the time period for the variance; and

(c) any conditions or other procedures, methods or equipment that the department determines are required in order to minimize the risk of release during the term of the variance.

(6) In order to reduce the risk of a release, any variance granted or issued by the department under this rule may be subject to conditions which may include implementation of procedures, methods, and the use of equipment not specifically required by law or rules. (History: 75-10-405, MCA; IMP, 75-10-405, MCA; NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2002 MAR p. 1477, Eff. 5/17/02.)

Rules 17.56.106 through 17.56.119 reserved

17.56.120 NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTY

(1) When the department assesses an administrative penalty under these rules, the department shall serve written notice on the alleged violator or the alleged violator's agent personally or by certified mail. Service by mail is complete on the day of receipt. The notice must state:

- (a) the provisions alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under these rules;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of the corrective action that the department requires, whether or not a portion of the penalty is to be suspended;
- (f) an estimate of the costs of compliance with the corrective action;
- (g) where to receive help to correct the alleged violation;
- (h) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (i) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and
- (j) that a formal proceeding may be waived. (History: 75-11-505, MCA; IMP, 75-11-505, 75-11-525, MCA; NEW, 1998 MAR p. 1739, Eff. 6/26/98.)

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES

(1) Administrative penalties assessed under these rules may not exceed \$500 per day for each violation and may not be less than the minimum penalty prescribed in (2) of this rule.

(2) For each violation, the department shall assess the maximum administrative penalty, and allow the time for corrective action, specified in the table in this rule. Pursuant to 75-11-525(4), MCA, the department may suspend a portion of the maximum administrative penalty based on the cooperation and degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

VIOLATION	MAXIMUM PENALTY \$	MINIMUM PENALTY \$	VIOLATION CORRECTABLE	TIME ALLOWED FOR CORRECTION
(a) Failure to notify the department of an UST system	300	150	yes	10 days
(b) Failure to register an UST system	100	50	yes	10 days
(c) Failure to report a suspected or confirmed release/spill within 24 hours	500	500	no	not applicable
(d) Failure to investigate or respond to a release	500	250	yes	15 days
(e) Failure to temporarily or permanently close an UST system properly	500	250	yes	30 days
(f) Failure to properly install an UST system	500	250	yes	30 days
(g) Failure to install release detection or corrosion protection	500	250	yes	30 days
(h) Failure to provide spill/overfill prevention equipment	500	250	yes	15 days
(i) Failure to provide automatic line leak detection	500	250	yes	15 days
(j) Failure to install properly designed and constructed UST system components	300	150	yes	45 days
(k) Failure to perform release detection	300	150	yes	30 days
(l) Failure to provide financial assurance	300	150	yes	30 days
(m) Failure to maintain release detection or corrosion protection equipment	200	100	yes	30 days
(n) Failure to provide required records within 48 hours of notice	100	100	no	not applicable
(o) Failure to maintain required records	100	50	yes	30 days
(p) Failure to obtain a compliance inspection within the statutory time	500	250	no	not applicable

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(q) Operating an UST without a valid operating permit	500	500	no	not applicable
(r) Failure to correct violations noted in a compliance inspection report within the time allowed by rule	500	250	yes	30 days
(s) Failure to obtain a follow-up inspection after correcting violations noted in a compliance inspection report	500	100	yes	10 days
(t) Failure to empty an UST that is not in compliance with rules related to release prevention and detection and corrosion protection in subchapters 2, 3 and 4	500	300	yes	15 days
(u) Failure to notify of change of ownership	500	250	yes	15 days
(v) Failure to file inspection report within 10 days of inspection	500	250	yes	10 days

(3) Upon receipt of a written notice that corrective action required by the department has been completed, the department may suspend a portion of the administrative penalty.

(4) To verify that corrective action has been completed, the department may inspect the site of the violation and any records regarding the corrective action. (History: 75-11-505, MCA; IMP, 75-11-505, 75-11-525, MCA; NEW, 1998 MAR p. 1739, Eff. 6/26/98; AMD, 2001 MAR p. 2459, Eff. 12/21/01; AMD, 2003 MAR p. 2759, Eff. 12/12/03.)